



July 21, 1999

Mr. Thomas H. Arnold
Office of the City Attorney
City of Texarkana
P. O. Box 1967
Texarkana, Texas 75504

OR99-2051

Dear Mr. Arnold:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126323.

The City of Texarkana (the "city") received a request for "the results of the rape kit analysis, including any DNA analysis, that was transmitted by the Texarkana, Texas C.I.D. to the Texas Department of Public Safety and, ultimately, to the Southwest Institute of Forensic Science." In response to the request, you submit to this office for review the records at issue.¹ You assert that the requested records are excepted from required public disclosure by section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Based on the city's correspondence to this office and the requestor's letter, it appears that the city did not seek an open records decision from this office within the statutory ten *business* day deadline. See Gov't Code § 552.301. The city's delay in this matter results in the presumption that the requested information is public. See *id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381.

¹We note that the name of the alleged rape victim as submitted by the requestor is not the same as the name on the responsive information. Based on your brief, we presume that the submitted information is responsive to the request.

In this instance, you have not presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to section 552.108. We therefore deem this exception to required public disclosure as being waived.² We note, however, where information is made confidential by other law or where third party interests are at issue, a compelling reason exists to overcome the presumption that information is open under section 552.303(e). *See* Open Records Decision No. 150 (1977). Accordingly, we will next consider whether some of the information at issue must be withheld from public disclosure pursuant to section 552.101 of the Government Code.³

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section protects information coming within the common-law right to privacy. Protection of the victim’s common-law privacy interests constitutes a compelling reason for withholding information from disclosure. The test for whether information should be withheld from disclosure under common-law privacy is whether the information is (1) highly intimate or embarrassing to a reasonable person, and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). The information requested involves allegations of aggravated sexual assault. In Open Records Decision No. 339 (1982), this office ruled that common-law privacy permits the withholding of the name of every victim of a serious sexual offense, and that the mere fact that a person has been the object of a rape or attempted rape reveals “highly intimate or embarrassing facts” about the victim, disclosure of which would be “highly objectionable to a person of ordinary sensibilities.” Therefore, information concerning the victim’s name, address, employment, telephone numbers, and any other types of identifying information contained in the responsive reports must be withheld from disclosure.

However, you have not shown compelling reasons why the remaining information at issue should not be released. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov’t Code § 552.352 (distribution of confidential information is criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

²A governmental body may waive a claim under section 552.108 of the Government Code. *See* Open Records Decision No. 177 (1977).

³The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. *See generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and a stylized "H".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 126323

Encl.: Submitted documents

cc: Mr. M. Mark Leshner
Leshner & Murry
P. O. Box 2033
Texarkana, Texas 75504-2033
(w/o enclosures)